



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number:	2502918
Applicant Name:	Troy Hussing
Address of Proposal:	3640 W. Commodore Way

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit for future construction of a four ft. by 76 ft. pier, three ft. by 36 ft. ramp and a ten ft. by ten ft. float, accessory to a single family residence. Project includes installation of seven structural piles and one mooring pile. Existing piles, ramp and pier debris to be removed.

The following approvals are required:

Shoreline Substantial Development Permit - to allow the construction of a moorage pier in an Urban Residential/Conservancy Recreation (UR/CR) Shoreline Environment. (Section 23.60.020A Seattle Municipal Code)

Shoreline Variance - to allow a pier to exceed 100 ft. in length. (Sections 23.60.036 and 23.60.204 B6 Seattle Municipal Code)

SEPA - Environmental Determination - Chapter 25.05 SMC

SEPA DETERMINATION:

☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND DATA

Site Location and Description

The subject site is located at 3640 West Commodore Way on the south shore of Salmon Bay Waterway. The submerged portion of this site is located in the Conservancy Recreation (CR) shoreline environment. The dry land portion of the site is located in the Urban Residential (UR) shoreline environment. The property is developed with a single family residence on the dry land portion, and an existing boat ramp of approximately 27 feet in length. Remnants of a previously existing pier, which was destroyed by a storm in 1991 (including five, 4-inch steel piles, approximately 60 sq. ft. of aluminum ramp and approximately 55 sq. ft. of in-water debris), remain on site. The applicant intends to remove the remnants of the destroyed pier as part of the current proposal.

Zoning

Single Family 5000, with the Urban Residential and Conservancy Recreation (UR/CR) Shoreline Master Program designations. The UR designation is for the dry-land portion of the site and the CR designation is for the submerged land portion of the site.

Area Development

North: Salmon Bay Waterway; Conservancy Recreation shoreline designation
East: Single Family 5000; Urban Residential and Conservancy Recreation shoreline designation
South: Single Family 7200; Urban Residential shoreline designation
West: Single Family 5000; Urban Residential and Conservancy Recreation shoreline designation;

Proposal Description

The applicant proposes to install a new four-foot wide by 76-foot long pier, a three-foot wide by 36-foot long ramp and a ten-foot by ten-foot (100 sq. ft.) float, with a total combined length of 117'-8" feet, eight inches. This exceeds the 100-foot maximum pier length permitted by the code by 17'-8", and requires variance approval. The applicant also intends to remove the remnants of a previously destroyed pier as part of the current proposal.

Previously, this variance application also included a request for a variance for a float to exceed 100 sq. ft. The float design was subsequently modified and reduced in size to the 100 sq. ft. maximum allowed by the code, and the need for a second variance has been eliminated. The reduction of the float size required a redesign which slightly extended the overall length of the proposed pier, ramp and float from the 116 feet originally proposed to 117'-8". (This is why some of the materials in the project file refer to an overall length of 116 feet). A 'float lift' (i.e. floating boat lift) which was also part of the original proposal has also been removed from the project.

Although the proposal is for a pier accessory to single family use the fair market value exceeds \$10,000.00. Therefore, the development is not exempt from obtaining a shoreline substantial development permit. The project requires a Shoreline Variance Permit because the design of the pier (length) does not meet development standards per SMC 23.60.204 B6.

Public Comment

The initial public comment period ended on August 12, 2005. A second variance request was added, which required additional public notice (the second variance was subsequently dropped). The second public comment period ended on September 30, 2005. Two neighbors commented on the proposal. One neighbor voiced support for the proposed pier. Another neighbor asked to be provided with notice of the decision.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the State of Washington to provide for the management of all shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology acts in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle, as well as other local jurisdictions, adopted a local shoreline master program, which for the City, is codified in the Seattle Municipal Code at Chapter 23.60

that also incorporates the provisions of Chapter 173.27 WAC. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

The proposed residential moorage pier, ramp and float would provide a recreational opportunity for the home owners and would not interfere with the public's use of the water. The subject application is consistent with the procedures outlined in RCW 90.58.

B. THE REGULATIONS OF THIS CHAPTER

Chapter 23.60 of the Seattle Municipal Code is known as the "Seattle Shoreline Master Program". In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SMC 23.60.030 (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SMC 23.60.064). The proposed residential moorage pier, ramp and float are permitted accessory uses in the underlying SF 5000 residential zoning district and meet applicable zoning development standards with the exception of pier length for which a shoreline variance has been requested. Please see the discussion regarding the shoreline variance, below.

The subject property is classified as a waterfront lot (SMC 23.60.924) and is located within an Urban Residential (UR) shoreline environment. In order to obtain a shoreline substantial development permit the proposal must be consistent with the shoreline policies established in the Land Use Element of Seattle's Comprehensive Plan (SMC 23.60.004) and the purpose and location criteria for the applicable shoreline environment contained in SMC 23.60.220. Residential piers are permitted as accessory uses in SMC 23.60.092.E. The subject proposal must be consistent with the general development standards for all proposals within a shoreline environment found in SMC 23.60.152. The standards for piers and floats accessory to residential development are found in SMC 23.60.204 and for development in the UR shoreline environment in SMC 23.60.540. The subject pier exceeds the length permitted outright. A shoreline variance has been requested; see discussion below.

SMC 23.60.004 - Shoreline Policies and SMC 23.60.220.C.6 - Environments Established

The goals for shoreline use include long-term over short-term benefits, the integration and location of compatible uses within segments of the shoreline, and the location of all non-water dependent uses upland to optimize shoreline use and access. The intent of the area objectives for residential areas along Salmon Bay is to protect existing single family residential uses. The purpose of the UR shoreline environment is also to protect residential areas.

The proposed residential pier would provide a recreational opportunity and enjoyment of Salmon Bay for the single family residents. As an authorized accessory use, in an established residential area, the proposal would be consistent with the intent of the above described shoreline goals and policies. The proposal meets all applicable development standards with the exception of pier length. A shoreline variance has been requested; see discussion below.

SMC 23.60.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environments. They require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. All shoreline development and uses must in part: 1) minimize and control any increases in surface water runoff so that receiving water quality and shore properties are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area; and 3) be located, constructed, and operated so as not to be a hazard to public health and safety; 4) all shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes; 5) All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion; 6) All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

The City's Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. In conjunction with this effort a Director's Rule, 6-93, was developed to apply best management practices (BMPs) to prevent erosion and sedimentation from leaving construction sites or where construction will impact receiving waters. Due to the location of the proposed work, the potential exists for negative impacts to Salmon Bay during construction. To avoid this, the applicant should take measures to prevent contamination of land or water and use materials and construction methods which prevent toxic materials, petrochemicals and other pollutants from entering surface water during and after construction, and prevent any construction debris from entering the water. SMC Section 23.60.064.E provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter 23.60 and with RCW 90.58.020 (State policy and legislative findings).

The proposal, as designed and conditioned below including the proposed mitigation, would not adversely affect the quality and quantity of surface and ground water on and adjacent to the site on a long-term basis. No planned discharge of solid wastes would occur. Spillage of petroleum or diesel products must be avoided and contained should it occur. No intentional release of oil, chemicals, or other hazardous materials shall occur. Erosion would not result from the development. Impacts to fish and wildlife and shoreline processes are minimized. Long-term impacts to surrounding land and water uses are also minimized. No vegetation will be cleared with this proposal. No hazard to public safety or health is posed by this development. Navigation channels would not be affected. The proposal would not affect existing shoreline stabilization and no submerged public right-of-way or view corridors would be significantly affected.

The conditions noted at the end of this report, which are based on the criteria of SSMP 23.60.152, ensure that the project conforms to the goals and regulations of the Seattle Shoreline Master Program. The public interest suffers no substantial detrimental effect from the proposal.

SMC 23.60.204 – Piers and Floats Accessory to Residential Development

These standards regulate the size and location of piers for residential uses. Piers should be located generally parallel to side lot lines and perpendicular to the shoreline and the proposed pier would be consistent with this code requirement. The proposed pier would not be located within 15 ft. of the side lot lines. The width of the lot is more than the minimum 45 ft. The 10 ft. by 10 ft. float will not exceed the maximum 100 sq. ft. allowed for floats and will be more than five ft. away from the side lot lines. The proposed pier, ramp and float is 117'-8" in length and exceeds the maximum 100 ft. allowed from the shoreline, however it is not beyond the length of the neighboring piers. A shoreline variance has been requested for pier length; see discussion below. The proposed residential moorage pier, ramp and float will be consistent with the code requirements for piers accessory to residential development.

Disturbance of the tidal bed sediments and aquatic habitat is expected because seven mooring piles will be installed and the pier structure will have some shading affect. The mitigation proposed is expected to offset these impacts. There is also the potential for construction debris to enter the water during construction, so best management practices (BMPs) will be required to prevent this from occurring.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

WAC 173-27 establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW 90.58. It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the state's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter 23.60 is also consistency with WAC 173-27 and RCW 90.58.

Thus, as conditioned below, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

Conclusion

SMC Section 23.60.064.E provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter 23.60 and with RCW 90.58.020 (State policy and legislative findings).

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED**.
Conditions are listed at the end of this report.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT VARIANCE

Section 23.60.036 of the Seattle Municipal Code provides criteria for review of a shoreline variance and reads: *In specific cases the Director with approval of DOE may authorize variances from certain requirements of this chapter if the request complies with WAC 173-27-170, as now constituted or hereafter amended.*

WAC 173-27-170 explains the purpose and review criteria for granting a variance permit. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

- (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
- (b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;
- (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
- (d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
- (e) That the variance requested is the minimum necessary to afford relief; and
- (f) That the public interest will suffer no substantial detrimental effect.

(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

- (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;
- (b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and
- (c) That the public rights of navigation and use of the shorelines will not be adversely affected.

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

(5) Variances from the use regulations of the master program are prohibited.

Response to Variance Criteria

(1) The policy enumerated in RCW 90.58.020 provides for: “. . . management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.” Further, the policy states: “Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.” Single family residences and their appurtenant structures are the first of several uses listed as priorities under the policy language. The proposed pier, ramp and float accessory to a single family residence is consistent with this policy.

As described below, the shallow depth of the water at a distance 100 feet from the shoreline represents an extraordinary circumstance requiring variance relief. The proposed pier has been designed to the minimal length to afford relief, and as a result will not result in public detriment.

(2a-f) These criteria are not directly applicable because the portion of the proposed pier that will require variance approval is located waterward (not landward) of the ordinary high water mark (OHWM). However, consistency with these criteria is required per the discussion under 3b, below.

(3a) This criterion requires a finding that the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property. The applicant has demonstrated that the waterward portion of the site is located in a low slope area where the tidal substrate extends out at an approximate 3% slope for the first 60 feet of water beyond the existing seawall, and then tapers at a slope of approximately 7.9%. As a result, at extreme low water the depth 100 feet from the shoreline is approximately 1'-6". This is too shallow to prevent a float from resting on the tidal substrate at extreme low tide. The additional 17'-8" of combined pier/float length are required to reach a suitable depth for mooring a small craft. (The applicant has indicated the property owner has a 22-foot boat which draws about 20 inches). As shown on the section drawing on Sheet A.3, at extreme low tide the depth of the water on the far side of the proposed float would be about three feet, which is sufficient to

prevent grounding. Without variance relief, the applicant would be prevented from mooring even a small boat with a relatively small (20") draw, and would be precluded from enjoying a functional moorage pier and float accessory to their single family home, which is reasonable use of the waterward portion of the parcel.

(3b) This criterion requires the proposal to be consistent with the criteria established under subsection (2 b-f), above. Regarding the property-related hardship, the property has a very gradual slope resulting in insufficient depth for boat moorage within 100 feet of the shoreline (as described above). As shown on Plan Sheet A1, the proposed pier, ramp and float, with an overall length of 117'-8" would fall behind a line subtended between the existing piers on adjacent properties. Aerial photos available to this Department show similar piers and floats to be common appurtenances to single family residences in the area. Allowing the extra 17'-8" in length requested by the applicant would provide sufficient depth to allow the float structure not to ground during low and extreme low tides. The proposed pier, ramp and float are also fully grated with 60 percent open space grating to reduce shading impacts. During the review of this proposal, the applicant reduced the size of the float in response to Department concerns. As designed, the proposed pier, ramp and float are similar in configuration and the same size or smaller than other piers in the vicinity. As such, they will not be materially detrimental to the public welfare. The proposal is consistent with criteria 2 b through f, above.

(3c) This criterion requires a finding that the public rights of navigation and use of the shorelines will not be adversely affected.

As discussed above, the proposed pier, ramp and float, with an overall length of 117'-8" would fall behind a line subtended between the existing piers on adjacent properties. It is of a similar or smaller size and configuration as other piers in the vicinity, and will be grated to minimize shading impacts. As proposed, the pier will not interfere with navigation or the public use of the shoreline.

4) This criterion requires consideration of the cumulative impacts of additional requests for like actions in the area, and a finding that the granting of variances for those actions in similar circumstances, in total, would not result in substantial adverse effects to the shoreline environment.

The applicant provided an analysis which examined the potential increased overwater coverage that would be created by the granting of like variances in the area. The analysis looked at properties in the vicinity with similar zoning and orientation to Salmon Bay, and included eleven waterfront properties to the east of the subject site and 21 to the west. The analysis used the previously proposed overall length of 116 feet, rather than the revised 117'-8" length. However, the slight increase in length would not significantly alter the results of the analysis, which are rough estimates based on aerial photos and a large-scale (1:10,000) nautical chart to estimate the depth of the water at various sites.

For the eleven properties east of the subject site, the applicant estimated the depth of the water in front of those residents to be about the same as the subject site. Based on this estimate, it was assumed that piers at these properties would also need to extend out to approximately 116 in

length. A float size of 100 sq. ft. and a three-foot ramp width was also assumed for the sake of comparison. If a variance for a like action was granted for each of these properties approximately 1,298 sq. ft. of additional overwater coverage would be created (beyond the 100-foot length).

The 21 properties west of the subject site slope even more gradually underwater. The applicant estimated that piers at these properties may need to extend to 130' to 150' to reach the same proposed depth as the subject property. Two of these properties already have piers which exceed 150 feet in length, and seven of the properties are less than 45 feet in width and therefore would not be allowed a single residential pier (i.e. would be required to share piers). The applicant estimated that there are twelve properties that would be able to have a single residence pier, and would require an average length of 140 feet to reach adequate depth. If like variances were granted the increased overwater coverage (beyond 100 feet) would be approximately 2,280 sq. ft. The applicant did not consider the potential addition of shared piers in this area. If three shared piers were added with similar variances, the additional overwater coverage would be about 570 sq. ft.

Using the approach described above, it is estimated that approximately 4,148 sq. ft. of new overwater coverage would be created if variances were granted for like actions in the area. This includes the area of the pier beyond the 100-foot allowed length.

The applicant notes that the design features of the new overwater structures would be important criteria in evaluating potential cumulative impacts, and suggests nine features which are incorporated into their proposal to minimize impacts. These features include:

Keep pier widths to a minimum; not to exceed four feet in near-shore area where possible. Piers should be fully grated with 60% light transmittal. Bottom of structures should be at least 1.5 feet above mhhw.

Keep ramps to a minimum width, three feet where feasible, and fully grated.

Keep number and width of piles to a minimum, especially in near shore area. Only three are used for the applicant's 76-foot long pier and four are used to anchor the float.

Paint, stain, or preservatives used for in and overwater structures must be leach resistant, completely dried or cured prior to installation, and not be treated with pentachlorophenol, creosote, CCA or comparably toxic compounds. The applicant's pier is engineered to be constructed of only steel or aluminum compounds for durability. Any material used to coat these materials must meet the above standards. Floats should not be allowed to ground and should be kept to a maximum of 100 sq. ft. (per City code) and should provide maximum amount of light penetration possible while maintaining structural integrity of the float.

Keep overall length of overwater structures to a minimum necessary to provide enough depth to be usable but prevent grounding of structure or vessel.

Implement shoreline planting/riparian vegetation plan where possible. The applicant's proposal includes approximately 100 sq. ft. of new native vegetation and additional 100 sq. ft. is a condition of this permit.

Remove debris where possible. This proposal includes removal of deteriorated metal and wood (from old pier previously destroyed in a 1996 storm) from near shore area and repair of existing rockery. Other projects might include debris removal on or off-site.

Orient structures to minimize shadow impacts, if possible. The applicant's proposal is oriented north/south which will allow greater light transmittal than structures oriented to the east/west.

Taking these mitigation measures into consideration, the potential cumulative impacts of an additional 4,148 sq. ft. of overwater coverage which could result if variances similar to the subject proposal were granted in the vicinity would not result in substantial adverse effects to the shoreline environment.

DECISION - SHORELINE VARIANCE

The Shoreline Variance is **CONDITIONALLY GRANTED**. Conditions are listed at the end of this report.

ANALYSIS - SEPA

Disclosure of the potential impacts from this project was made in the following documents: the Environmental Checklist dated June 27, 2005, and the Joint Aquatic Resource Permit application (JARPA) dated June 27, 2005, the plans and supplemental information in the project file. The information in the SEPA checklist, the supplemental information described above, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, "*Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*" subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of shorelines, aquatic habitat and displacement of some

fish and wildlife species due to the disturbance from the construction activities. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC 25.05.794). Although not significant, these impacts are adverse and, in some cases, mitigation may be warranted.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Air Pollution Control Agency (air quality). In addition Federal and State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

The proposed construction work will take place in and adjacent to the waters of Salmon Bay. Additionally, construction material will be delivered by barge over-water. With the proposed work taking place in and adjacent to water and the delivery of construction material taking place over-water, there exists the potential for debris and other deleterious material to enter the water during this proposed work. Best management practices (BMPs) should be employed to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A boom should be deployed around the construction area to contain any debris that enters the water during construction. At a minimum the floating debris that enters the water during construction should be collected once per day. This material should be contained on site and then disposed of at the appropriate upland facility. General in water construction activity will be restricted to the times allowed by the Army Corps Letter of Permission dated September 16, 2005.

Construction material and equipment pose some potential danger of water and near shore contamination and shoreline erosion. The contamination from spills could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing construction emergency containment procedures be developed and all necessary equipment be stocked on the site. It is also warranted to require the use of BMPs to minimize erosion along the shoreline caused by storage and staging construction material in this area.

No further SEPA conditioning of potential short-term impacts appears to be warranted.

Long-term Impacts

Long-term or use related impacts are also anticipated from the proposal and include: an increase in overwater coverage by 512 square feet. These long-term impacts are potentially significant without mitigation; therefore, merit a detailed discussion of the impacts and the required mitigation.

Plants and Animals

Chinook salmon a species listed as threatened under the Endangered Species Act (ESA) in March 1999, and coastal-Puget Sound bull trout, a species listed as threatened under ESA in November of 1999 are known to inhabit Salmon Bay including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to take place in Salmon Bay which is rearing habitat and is part of the migration corridor of Chinook salmon from the Cedar River and the other water bodies in Water Resource Inventory Area 8. Coastal-Puget Sound bull trout have been found in this area during their marine life stage.

Clearly identified long-term impacts on juvenile Chinook salmon and coastal-Puget Sound bull trout and the aquatic environment include an increase in overwater coverage and number of piles present in the habitat of threatened species. Overwater coverage and piles impact the quality of natural habitat of juvenile Chinook salmon and coastal-Puget Sound bull trout by creating shading and reducing the area of substrate that is used for benthic and epibenthic species, which are a food source for salmonids.

As provided by SMC 25.05.350 A, when making a threshold determination the lead agency may consider mitigation measures that the agency or applicant will implement. Proposed mitigation measures may allow the lead agency to issue a Determination of Non-Significance (DNS). These mitigation measures can be in the form of clarification of the proposal, changes to the proposal, or the project may be conditioned to include the mitigation measures. The applicant has included mitigation measures in the project to offset the impacts of the proposed work (as shown on Plan Sheet A3, dated April 11, 2006), and DPD has imposed conditions on this project. These mitigation measures and conditions are listed below.

- Removal of existing ramp (damaged in 1991 storm, Approximately 60 square feet);
- Removal of manmade debris from tidal substrate (Approx. 55 sq. ft.);
- Removal of five existing piles from the tidal substrate;
- Install functional grating on the proposed ramp, pier and float; and
- Plant native, riparian vegetation of approximately 200 sq. ft. per plan.

Each of these mitigation measures and conditions are believed to minimize impacts on juvenile and adult salmonid habitat at the site and improve the aquatic habitat for juvenile Chinook salmon, coastal-Puget Sound bull trout and other species. Collectively these measures will eliminate the dark areas that exist under the floating docks, minimize the impacts to the substrate and increase the allochthonous input to the system from terrestrial vegetation. This in turn will provide more food for juvenile salmonids and should remove the barrier impact of structures on migration and rearing by minimizing the shading caused by the piers thus allowing the juvenile fish to remain in the shallow water during their migration and rearing reducing the juvenile Chinooks' vulnerability to predation in the nearshore environment.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have significant adverse impacts upon the environment. An EIS is not required under RCW 43.21C.030.(2)(C).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT, SEPA and SHORELINE VARIANCE

Prior to Issuance of the Construction Permit

1. Spill prevention and response procedures shall be developed prior to commencement of construction and the appropriate material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site. This information shall be provided on the construction plan set.
2. The applicant's pier is to be constructed of only steel or aluminum compounds for durability as well as to ensure that no hazardous chemicals leach into the water, per plan. Any treatment of the steel or aluminum material shall be non-leaching and non-toxic to the estuarine and marine environment. This information shall be shown on the construction plan set.
3. A two hundred (200) square foot area adjacent to the shoreline shall be enhanced. This enhancement shall include removal for non-native vegetation and the planting terrestrial native vegetation along the shoreline and a monitoring plan for this vegetation that will ensure 80% survival of the vegetation planted in this area. This area shall be shown on the construction plan set.

During Construction

The following conditions(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

4. Remove existing ramp, debris and five piles from the tidal substrate. Any depressions in the substrate shall be filled with native substrate that is similar to what exists at the site.
5. Appropriate best management practices (BMPs) shall be employed to prevent debris and deleterious material from entering Salmon Bay during the proposed in-water work. BMPs shall include the deployment of a boom surrounding the construction area. The boom shall remain in place for the duration of the proposed work.
 - a. The boom shall serve to collect any floating debris, which may enter the water during the construction activities. This floating debris shall be removed from the water daily, stored on-site, and then disposed of in the appropriate upland facility.
 - b. If heavy (sinking) debris enters the water during the repair work, the location of the debris shall be documented in a log to be kept through the duration of the project. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during construction.
6. No toxic materials, petrochemicals and other pollutants shall enter the surface water during the proposed repair work. The Spill prevention and response procedures developed for this project shall be followed and the appropriate material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
7. Personnel shall be trained in the plans and procedures for the prevention, containment and clean-up of toxic material.

Two hundred (200) square foot area adjacent to the shoreline shall be enhanced. This enhancement shall include removal for non-native vegetation and the planting terrestrial native vegetation along the shoreline and a monitoring plan for this vegetation that will ensure 80% survival of the vegetation planted in this area.

8. No fascia shall be installed because it blocks natural light from reaching under the pier.
9. Sixty percent light shall reach the water under the pier at the completion of the new pier, ramp and float installation.
10. The applicant's pier is to be constructed of only steel or aluminum compounds for durability as well as to ensure that no hazardous chemicals leach into the water, per plan. Any treatment of the steel or aluminum material shall be non-leaching and non-toxic to the estuarine and marine environment.

For the Life of the Project

11. The one hundred (100) square foot area adjacent to the shoreline that is enhanced with native vegetation shall be maintained. Any non-native vegetation shall be removed manually; no chemicals can be used to remove this vegetation.

12. No pesticides, herbicides, or chemical fertilizers shall be used in the riparian area along the shoreline including the two hundred (200) square feet area that is enhanced with native vegetation.
13. Maintain the shallow water and nearshore area clear of debris during the life of the project.

Signature: (signature on file)
Molly Hurley, Senior Land Use Planner
Department of Planning and Development

Date: June 1, 2006